

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. ENF-98-10
Brittan Communications International, Corp.)	
)	NAL/Acct. No. 916EF001
Apparent Liability for Forfeiture)	

ORDER OF FORFEITURE

Adopted: February 28, 2000

Released: March 2, 2000

By the Commission

I. INTRODUCTION

1. In this Order we assess a forfeiture of \$1 million against Brittan Communications International, Corp. (BCI) for its willful or repeated violation of section 258 of the Communications Act¹ and the Commission's rules and orders² by changing the preferred interexchange carriers (PICs) of sixteen consumers without their authorization (a practice commonly referred to as slamming).

II. BACKGROUND

2. The facts and circumstances leading to the issuance of our Notice of Apparent Liability (NAL)³ in the above captioned proceeding are recited there and need not be reiterated at length.⁴ Between January 1, 1998 and August 31, 1998, the Commission processed 254 written consumer complaints alleging slamming by BCI. The Commission conducted an investigation of 16 of those complaints, each of which alleged that BCI converted the complainant's long distance service provider from the chosen carrier to BCI without authorization. Twelve of the complainants provided statements and evidence that the signature

¹ 47 U.S.C. § 258

² See 47 C.F.R. §§ 64.1160; *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560 (1995) (LOA Order).

³ *Brittan Communications International, Inc.*, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 296 (1998) (BCI NAL).

⁴ *BCI NAL*, 14 FCC Rcd at 299-306.

on the purported letter of agency (LOA) relied on by BCI in submitting the PIC change was a forgery. The remaining four complainants provided statements and evidence that the signature on the LOA relied on by BCI was not the signature of the person with the authority to make the PIC change request. Based upon our review of the facts and circumstances surrounding these violations, in the NAL we found that BCI was apparently liable for a forfeiture in the amount of \$80,000 for each of the twelve forgeries and \$40,000 for each of the remaining four slamming violations, resulting in a total forfeiture amount of \$1,120,000.

III. DISCUSSION

3. In its Response to the NAL, BCI offers four arguments. First, BCI maintains that two of the alleged forged signatures on the LOAs were not in fact forged. Although BCI also contests the claims of slamming offered by the remaining 14 complainants, it does not present evidence in support of its contentions. Second, BCI argues that the forfeiture should be rescinded or reduced because, the proposed forfeiture does not comport with Commission precedent in forfeiture policies recently adopted and applied to more egregious situations. Third, BCI contends that the proposed forfeiture does not serve the public interest in fostering competition and that BCI has taken remedial actions to minimize the likelihood of future problems.⁵ Finally, BCI contends that the forfeiture should be reduced or rescinded because of BCI's lack of ability to pay. We take these arguments in turn.

A. Contested LOAs

1. The Cheney complaint

4. BCI has presented evidence of a handwriting expert who concluded the Cheney LOA was genuine by comparing an alleged Cheney signature on a U.S. Postal Service Domestic Return Receipt to the alleged signature of the Cheney LOA. While this evidence is not conclusive, particularly in light of conflicting evidence in the record, for purposes of this proceeding we will give BCI the benefit of the doubt and not include this complaint in the forfeiture. Accordingly, we reduce the amount of the forfeiture by \$80,000.

2. The Randall Complaint

5. We find unavailing BCI's assertion that the signature of the Randall LOA is likely that of Teresa Randall, the daughter of the subscriber, Yvonne Randall. BCI's expert compared the signature on the sworn declaration of the daughter to the signature on the Randall LOA, and concluded that the signature on the LOA was in all probability that of the daughter. Even though the daughter clearly stated in her declaration that she did not sign the LOA, BCI maintains that she has admitted that the signature on the LOA appeared to be hers. BCI asserts that because the subscriber has failed to prove by a preponderance of the evidence that the LOA was forged, the Commission should reduce or revoke the imposed forfeiture.⁶

⁵ Response at 6-30.

⁶ Response at 10.

6. BCI's assertions are legally insufficient and factually irrelevant. When the Commission believes that a carrier may have violated the Act or Commission rules and orders, the Commission, on its own motion, may issue a NAL against that carrier pursuant to authority granted under section 503 of the Act.⁷ The carrier may then present evidence either to mitigate its liability or to overcome the claims raised in the NAL. The Commission's rules clearly establish that an authorized individual, the "subscriber", to the telephone line(s),⁸ must sign the LOA to effectuate a PIC change request. The Commission found in its NAL that Yvonne Randall provided credible and compelling evidence that the LOA BCI relied upon to change her service was signed by an individual without authority to change her account.⁹ Because in this instance Yvonne Randall is the only person with the authority to switch her long distance service, it follows that her daughter's alleged signature on the LOA did not provide BCI with the requisite authority to change Yvonne Randall's service. We conclude, that regardless of whether the daughter's signature on the LOA is genuine, BCI improperly switched Yvonne Randall's long distance service, and BCI has failed to present evidence to the contrary. We will, however, reduce the forfeiture amount of this violation from \$80,000 to \$40,000, as it appears that Yvonne Randall's service may have been switched based upon a signature of an individual without authority to switch her account (generally \$40,000 forfeiture), rather than on a LOA containing her forged signature (generally \$80,000 forfeiture).

B. Appropriateness of Assessed Forfeiture Amount

7. We reject BCI's claim that the amounts assessed for each violation are inappropriate because they depart from Commission precedent. First we point out that BCI primarily bases this contention upon cases where carriers entered into consent decrees with the Commission.¹⁰ In these consents, each respective carrier agreed to provide additional safeguards against slamming along with making a voluntary payment to the U.S. Treasury to settle the NAL issued against them without a finding of liability.¹¹ These cases are not relevant to the imposition of a forfeiture. Finally, we note that although the Fletcher case cited by BCI involved particularly egregious slamming allegations, the Commission applied a \$15,000 per violation amount due to policies that were in effect at the time of the Fletcher case.¹² The Fletcher case also involved revocation of Fletcher's operating authority which is not the situation here. The

⁷ See 47 U.S.C. §503(b)(4)(A)

⁸ 47 C.F.R. §64.1160(b).

⁹ *BCI NAL*, 14 FCC Rcd at 307.

¹⁰ Response at 17.

¹¹ See *MCI Telecommunications Corporation*, 11 FCC Rcd 12630 (Com. Car. Bur. 1996); *Operator Communications, Inc. d/b/a Oncor Communications, Inc.*, 11 FCC Rcd 4861 (1995).

¹² *CCN, Inc.*, 13 FCC Rcd 13599, 13608, n. 50. (1998) (*Fletcher Companies*)

policies and procedures governing forfeitures now reflect a base forfeiture amount of \$40,000,¹³ and we have consistently assessed the base amount against carriers in our recent orders.¹⁴ We have also assessed a forfeiture amount for forged LOAs of \$80,000 per violation because we find forgeries to be a particularly egregious violation.¹⁵ As we explained in our NAL, these policies and guidelines include upward adjustment criteria based on our evaluation of the particular actions and circumstances of the violator.

8. We also reject BCI's contention that the forfeiture amount does not serve the public interest in fostering competition.¹⁶ As we have stated previously, slamming is not in the public interest because it "nullifies the ability of consumers to select the telecommunications providers of their choice."¹⁷ Further, "slamming" distorts the telecommunications market because it rewards those companies who engage in deceptive and fraudulent practices by unfairly increasing their customer base at the expense of those companies that market in a fair and informative manner and do not use fraudulent practices."¹⁸ We seek to deter companies from engaging in the illegal act of slamming and will employ the necessary forfeiture penalties to encourage compliance with Commission rules and orders. We thus find that the forfeiture penalty imposed against BCI will protect the public interest and foster *legitimate* competition.

C. BCI's Remedial Actions

9. We are not persuaded to reduce the forfeiture amount simply because BCI alleges that it abolished its sweepstake promotion prior to the issuance of the NAL and had since revised its internal procedures to combat unauthorized PIC changes. We note that while such compliance measures do not extinguish forfeiture liability, they may, when considered with other factors, reduce the forfeiture amount. In this instance, however we are not persuaded that BCI's subsequent remedial measures warrant reduction of the forfeiture. Since BCI's compliance measures were taken in response to the 16 consumer complaints at issue in this proceeding and the threat of a forfeiture, they provide no basis for rescinding or reducing the forfeiture.

¹³ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, CC Docket No. 95-6 (rel. December 28, 1999).

¹⁴ See *Fletcher Companies*, 13 FCC Rcd 13599; *Excel Telecommunications, Inc.*, 11 FCC Rcd 19765 (Com. Carr. Bur. 1997); *Target Telecom, Inc.*, 13 FCC Rcd 4456 (Com. Carr. Bur. 1996)

¹⁵ See *The Amer-I-Net Service Corporation*, Order of Forfeiture, CC Docket No. 98-11 (rel. February 8, 2000); *In the Matter of Qwest Communications International, Inc.*, Notice of Apparent Liability for Forfeiture, CC Docket No. 99-11 (rel. October 19, 1999); *In the Matter of All American Telephone Company, Inc.*, 13 FCC Rcd 15040 (1998).

¹⁶ Response at 3.

¹⁷ *Section 258 Order*, 14 FCC Rcd at 1510.

¹⁸ *Id.*

D. Assessment Factors for Forfeiture Amount

1. BCI's Financial Viability

10. Section 503(b)(2) of the Communications Act authorizes the Commission to assess a forfeiture of up to \$110,000 for each violation, or each of a continuing violation, up to a statutory maximum of \$1,100,000 for a single act or failure to act.¹⁹ In exercising such authority, the Commission is required to take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require.²⁰ Financial viability is one of many factors that we will consider in assessing a forfeiture amount.

11. We are not persuaded by BCI's contentions that it would suffer financially as a result of the forfeiture penalty, and that full payment of the fine would force BCI to curtail investment in system upgrades and halt expansion of its marketing efforts. Further we are not fully convinced that such steps would severely undermine BCI's long term ability to remain a viable business concern and competitor in the long distance market. We note that at the time we issued our NAL, BCI was a viable company with reported projected annual sales for 1998 in excess of \$48,000,000.²¹ In its response to the NAL, BCI provided no reliable evidence that it was unable to pay the forfeiture amount. We are aware that EqualNet Corporation subsequently acquired BCI's assets (including customer accounts and accounts receivable) as a result of a non-judicial foreclosure sale of BCI's assets.²² However, BCI remains a corporate entity and cannot escape financial liability for its willful and repeated slamming violations merely by selling its assets. We therefore decline to reduce the forfeiture.

2. History of Commission Offenses

12. As stated above, one of the factors the Commission must take into account in determining whether to adjust the base forfeiture amount is the carrier's history of prior offenses. Although BCI asserts that it has not previously been the subject of enforcement action, the record does reflect an ongoing problem regarding consumer complaints. Records maintained by the Commission indicate that between January 1, 1998 and August 31, 1998, the Commission received 254 written consumer slamming complaints against BCI. Even though BCI has not been the subject of other official action by the Commission, the consumer complaints reflect a

¹⁹ 47 U.S.C. §503(b)(2)(B); 47 C.F.R. §1.80. The Commission amended its rules by adding a new subsection to its monetary forfeiture provisions that incorporated the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, Sec. 31001, 110 Stat. 1321), enacted on April 26, 1996. *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997).

²⁰ See 47 U.S.C. §503(b)(2)(D).

²¹ *BCI NAL*, 14 FCC Rcd at 297.

²² See *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 EqualNet Corporation Request for Waiver*, 14 FCC Rcd 3975 (Com. Car. Bur. March 15, 1999).

potential pattern of slamming violations which further convinces us that it would be inappropriate to reduce the forfeiture.

IV. CONCLUSION

13. For the reasons set forth above, after reviewing the information filed by BCI and its response, we find that BCI is liable for a forfeiture in the amount of \$1 million.

V. ORDERING CLAUSES

14. Accordingly, it is ORDERED pursuant to section 503 (b) of the Act, 47 U.S.C. § 503(b) and section 1.80(f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), that Brittan Communications International, Inc. shall forfeit to the United States government the sum of one million dollars (\$1,000,000) for violating section 258 of the Act, 47 U.S.C. § 258 and section 64.1160 of the Commission's rules, 47 C.F.R. § 64.1160, and orders governing primary interexchange carrier conversions.

15. IT IS FURTHER ORDERED that payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules²³ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.²⁴ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the [NAL/Acct. No.] referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.²⁵

16. IT IS FURTHER ORDERED that a copy of this Order of Forfeiture shall be sent by certified mail to Jim G. Edwards, President, Brittan Communications International Corporation, 600 Jefferson Avenue, Suite 500, Houston, Texas 77002.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Secretary

²³ 47 C.F.R. § 1.80.

²⁴ 47 U.S.C. § 504(a).

²⁵ See 47 C.F.R. § 1.1914.